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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,985	02/18/2004	Kaveh Towfighi	DT-6763	4981
30377	7590	07/06/2005	EXAMINER	
DAVID TOREN, ESQ. ABELMAN FRAYNE & SCHWAB 666 THIRD AVENUE NEW YORK, NY 10017-5621			SMITH, SCOTT A	
			ART UNIT	PAPER NUMBER
			3721	

DATE MAILED: 07/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/780,985	TOWFIGHI ET AL.
	Examiner	Art Unit
	Scott A. Smith	3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 07 June 2005.  
 2a) This action is **FINAL**.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-7 and 10-12 is/are pending in the application.  
 4a) Of the above claim(s) 3 is/are withdrawn from consideration.  
 5) Claim(s) 10-12 is/are allowed.  
 6) Claim(s) 1, 2 and 4-7 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.  
 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

## DETAILED ACTION

Claim 3 remains withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 2/22/05.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 6 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Leonardo et al.

Leonardo et al. discloses the invention as claimed including a setting tool comprising a guide chamber 44, a piston having a stem 43, a bolt guide 15 including a top end with an inclined surface leading into a bore and defining a first region, a second region, i.e. the inner bore of the guide 15 having a predetermined length, and a bottom end with an inclined surface leading up into the bore, and defining a third region, wherein the second region is a smaller diameter than the two end regions. Regarding claims 2 and 7, the particulars of the fastener guide element is not given any patentable weight since a tool is claimed, not a combination of a fastener and a tool. Further, the tool of Leonardo et al. could be utilized to drive a fastener with the specifically recited

guide element, if desired, wherein the second region inherently performs a "braking" function on a fastener due to the contact therebetween.

Claims 1, 2, and 4-7 are rejected under 35 U.S.C. 102(b) as being anticipated by De Caro et al.

De Caro et al. discloses the invention as claimed including a setting tool comprising a guide chamber inside cylinder 42, a piston having a stem, a bolt guide 46 including a top end defining a first region, a second region including a ball 48 displaceable in the bore and biased by a rubber spring 49 (Note column 5, lines 2-4), a bottom end defining a third region, wherein the first and third regions are of the same diameter, and the second region is a smaller diameter than the first and third regions and has a predetermined length. Regarding claim 6, the ball itself is deemed to include inclined transition regions; i.e. the surfaces of the ball between the regions. Regarding claims 2 and 7, the particulars of the fastener guide element is not given any patentable weight since a tool is claimed, not a combination of a fastener and a tool. Further, the tool of De Caro et al. could be utilized to drive a fastener with the specifically recited guide element, if desired, wherein the second region inherently performs a "braking" function on a fastener due to the contact therebetween. Especially note the similar fastener in Fig. 4.

#### ***Allowable Subject Matter***

Claims 10-12 are allowed.

***Response to Arguments***

Applicant's arguments filed on 6/7/05 have been fully considered but they are not persuasive. Applicant argues that the cited references to Leonardo and De Caro fail to disclose a second region designed to brake the fastener. It is the Examiner's position that since Leonardo and De Caro disclose second regions having a reduced diameter, there would inherently exist a braking effect on a fastener contained therein, regardless of how small such an effect may be. Further, applicant's arguments are conditional upon the structure or size of the fastener, which is not claimed, *per se*. Applicants argument with respect to "means-plus-function" limitations are not fully understood since the claims are not written in 'means-plus-function" format.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott A. Smith whose telephone number is 571-272-4469. The examiner can normally be reached on 5:30-4:00 Tues.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

S. Smith



SCOTT A. SMITH  
PRIMARY EXAMINER